IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7280 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GD PATEL - Petitioner(s)
Versus
GUJARAT HOUSING BOARD - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
MRS KETTY A MEHTA for Respondent(s) : 1,
MR YN RAVANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 09/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order quashing and setting aside the order of

penalty dated 26.8.1994 as amended and confirmed by the appellate authority.

2. The petitioner was working as Deputy Executive Engineer in Division No. 5 at Ahmedabad in Gujarat Housing Board and since 1.1.1984 he was working as In-charge Executive Engineer. He was chargesheeted by chargesheet dated 8.6.1992 and a departmental enquiry was initiated against the petitioner in respect of certain defects and irregularities which were found in 7 works executed during tenure of the petitioner. An Enquiry Officer was appointed and he submitted report dated 18th March 1994. He has found the petitioner to be guilty of some of the charges levelled against him. It is required to be noted that some of the charges were with regard to negligence in performance of his duty, and the dereliction of duty. The report of the Enquiry Officer was then placed before the disciplinary authority which accepted the report of the

findings of guilt. The disciplinary authority thereafter heard the petitioner on the question of punishment and imposed the punishment of reducing the petitioner to the minimum of pay-scale for 5 years and that the petitioner will not be entitled to any yearly increment during the interregnum period. That the petitioner submitted representation before Chairman of the Gujarat Housing Board against the order of punishment, who by order dated 21.1.1995 modified the same, and instead of 5 years the petitioner was reduced to the minimum of the pay-scale for 3 years and to that extend the order of punishment imposed by the disciplinary authority was modified. Thereafter the petitioner preferred appeal before the appellate authority, however the same came to be dismissed. Being aggrieved and dissatisfied with the aforesaid order of punishment reducing the petitioner to the minimum of the pay-scale for 3 years, the petitioner has preferred this Special Civil Application under

Article 226 of the Constitution of India.

3. Shri Supehia, learned advocate appearing on behalf of the petitioner has submitted that the impugned order is in breach of principles of natural justice inasmuch as the petitioner had asked the Enquiry Officer to supply the petitioner with a copy of the report of the Gujarat State Vigilance Commission as also report of the Vijayranjan Committee and as the said demand was not met with the Enquiry Officer proceeded further with the Report without giving opportunity to the petitioner to controvert the same. He has submitted that there are other points on merits also on which the departmental enquiry as well as the impugned order cannot be sustained in the eye of law, however he has submitted that along with the petitioner other employees of the Gujarat Housing Board were also chargesheeted and departmental enquiry was initiated for the same work and out of which two

employees preferred Special Civil Applications No. 7133 of 1996 and 8026 of 1996 where the Enquiry Officer submitted Report relying upon aforesaid two documents/reports, and the aforesaid two Special Civil Applications came to be heard by the learned Single Judge who by judgment and order dated 29.8.2002 has been pleased to allow the two Special Civil Applications quashing and setting aside the order of punishment. It is further submitted by him that in fact the present Special Civil Application was ordered to be heard along with Special Civil Application No. 8026 of 1996 however for some reason the said Special Civil Application was not tagged with the present Special Civil Application. Relying upon the judgment and order passed by the learned Single Judge of this Court in aforesaid Special Civil Application, it is requested to allow the present Special Civil Application also and to give similar treatment to the petitioner.

4. On the other hand, Shri Ravani, learned advocate appearing for the respondent Board is not in position to dispute that the controversy raised in the present Special Civil Application is not covered by the judgment of the learned Single Judge of this Court in Special Civil Applications No. 7133 of 1996 and 8026 of 1996. He has however submitted that being aggrieved and dissatisfied with the order passed by the learned Single Judge of this Court the Board has preferred Letters Patent Appeal No. 1103 of 2002 and the said appeal has been admitted and therefore it is requested not to rely upon the said judgment at this stage.

5. Shri Supehia, learned advocate appearing on behalf of the petitioner has submitted that in the aforesaid Letters Patent Appeal No. 1103 of 2002, a Civil Application No. 8660 of 2002 for interim relief was filed by the Board, however,the Division Bench has refused to grant

interim stay, and has passed the order that if ultimately on losing the appeal the amount that may be paid to the employees as a result of the decision of the learned Single Judge may be adjusted towards the retiral dues or pension amount that may be payable to them. It is further ordered by the Division Bench that payments that they may receive as a result of succeeding in the petition will be subject to the outcome of the appeal. Shri Supehia has submitted that the petitioner is also agreeable to the same and the amount that may be paid to the petitioner as a result of the decision in this Special Civil Application may be adjusted towards the retiral dues or pension amount that may be payable to the opponent.

6. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the grievance which is voiced in the present

Special Civil Application was also raised in Special Civil Application No. 8026 of 1996 and another and the facts in both the Special Civil Applications are identical and the petitioner of present Special Civil Application as well as petitioner of Special Civil Application No. 8026 of 1996 were subjected to disciplinary enquiry for the same work and the project, and they were working together, and in the case of Special Civil Application No. 8026 of 1996 relevant documents relied upon by the Enquiry Officer were not supplied, and that the enquiry proceeding itself was against the principles of natural justice. Similar is the case in the present Special Civil Application. The learned advocate appearing on behalf of the respondents has failed to satisfy this Court to take a different view than the view taken by the learned Single Judge of this Court in Judgment dated 29.8.2002 in S.C.A. No. 7133 of 1996 with SCA No. 8026 of 1996. On going through the relevant record of

the present Special Civil Application as well as the judgement of the learned Single Judge in the aforesaid two Special Civil Applications, this Court is in complete agreement with the same and is not in position to take a different view. Under the circumstances, and for the reasons stated above, and for the reasons stated in the judgment and order dated 29.8.2002 by the learned Single Judge in Special Civil Application No 7133 of 1996 with Special Civil Application No. 8026 of 1996, the present petition is required to be allowed and the impugned order of punishment is required to be quashed and set aside. It is true that, against the said judgment and order, the Board has preferred the appeal, however the judgment and order passed by this Court is not stayed, and on the contrary it is observed that any payment to be made will be subject to the result of the aforesaid Letters Patent Appeal. Under the circumstances, while allowing the present Special Civil Application, it is observed

that any amount to be paid to the petitioner, by quashing and setting aside the impugned order, will be subject to the result of the Letters Patent Appeal No. 1103 of 2002 and/or any appeal that may be preferred by the respondent Board.

7. For the reasons stated above and for the reasons recorded in the judgment and order dated 29.8.2002 by the learned Single Judge in Special Civil Applications No. 7133 of 1996 and 8026 of 1996, the present petition is allowed. The impugned order passed by the Commissioner, Gujarat Housing Board, imposing the punishment of putting the petitioner in minimum of pay-scale for 3 years, is hereby quashed and set aside. The petitioner will be entitled to all consequential benefits subject to the observations made hereinabove. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.